

1 make up for a decline in self-response or failure  
2 to not -- failure to answer a NRFU as a result of  
3 this citizenship question?

4 MS. BAILEY: Objection. Compound.

5 THE WITNESS: So I believe in the -- in  
6 the -- not this memo -- well, it probably is in  
7 this memo, too -- but there was a computation of  
8 what the expected increase in nonresponse  
9 follow-up costs would be. 401/403

10 BY MR. TILAK:

11 Q Do you remember what the calculation was?

12 A Offhand, I think it was in the, you know,  
13 20 to \$40 million range, something like that.

14 Q Was that a conservative estimate?

15 A A conservative -- yeah. I think they  
16 thought it -- that that was potentially a lower  
17 bound.

18 Q Are you aware of any calculation at the  
19 upper bound of what the cost might be?

20 A Not of an upper bound, no.

21 Q Earlier today we discussed sensitive  
22 questions. Is it accurate that if a question is

1 sensitive to a particular population, that  
2 population might fail to respond to that  
3 particular question? 401/403

4 MS. BAILEY: Objection. Calls for  
5 speculation.

6 THE WITNESS: So to the degree that  
7 sensitive questions have lower self-response  
8 rates, that could potentially be true, yeah.

9 BY MR. TILAK:

10 Q And if there's a sensitive question on a  
11 questionnaire, does the presence of that question  
12 increase the likelihood that a person will not  
13 respond to the questionnaire as a whole?

14 A Again, that -- that could happen, yes.

15 Q We -- you also talked about cognitive  
16 testing at some length this morning. What does it  
17 mean for a question to be cognitively difficult?

18 A So the person doesn't understand what  
19 we're asking.

20 Q And if a question is cognitively  
21 difficult, does that increase the likelihood that  
22 the respondent will fail to answer that specific

1 question on the questionnaire?

2 A Yes.

3 Q Does it also increase the likelihood that  
4 the respondent will fail to respond to the  
5 questionnaire as a whole?

6 A That, I -- I -- I'd have to see studies  
7 on that. As surveys go, census questions are  
8 typically not that cognitively difficult. Health  
9 surveys are far more cognitively difficult, just  
10 to give you a -- some parameters.

11 Q Is there -- is there a threshold in your  
12 mind for when a question is cognitively difficult?

13 A Not in my mind. I would leave that up to  
14 the folks that would evaluate that sort of thing.

15 Q And who would those people be?

16 A So we have some survey methodologies that  
17 look at that type of thing, as do other survey  
18 organizations.

19 Q For the 2020 census, the citizenship  
20 question will be placed at the end, correct?

21 A Correct.

401/403

22 Q What was the reason for that?



1           A    Since it was added late, it was placed at  
2   the end.

3           Q    That particular ordering was not tested  
4   in any way, correct? 401/403

5           A    No, it wasn't.

6           Q    But households are still required to  
7   answer the citizenship question, correct?

8           A    Yes, they are.

9           Q    Even though it's placed at the end?

10          A    Yes.

11          Q    The Census Bureau has not communicated to  
12   the public that the citizenship question is  
13   optional, to your knowledge?

14          A    No.

15          Q    Do you know if DOJ has communicated to  
16   the public whether the citizenship question is  
17   optional?

18               MS. BAILEY:  Objection.  Foundation.

19               THE WITNESS:  Well, the Census Bureau's  
20   position is that it is not, so.

21   BY MR. TILAK:

22          Q    In fact, a person faces penalty for

1 questionnaires must satisfy some statutory or  
2 regulatory need; is that correct?

3 A Correct.

4 Q And generally, the Census Bureau only  
5 asks questions that are requested by an agency,  
6 correct?

7 A Yes. That's correct.

8 Q And the impetus for adding the  
9 citizenship question here was the DOJ's Gary  
10 letter --

11 A Yes.

12 Q -- correct?

13 And this letter asked for block-level  
14 citizenship data, correct?

15 A Correct.

16 Q And the Census Bureau decided to use the  
17 ACS question, correct?

18 A That's correct.

19 Q When in the process did the Census Bureau  
20 decide that if they were going to ask a  
21 citizenship question, it would be the ACS  
22 question?

1           A    Early in the process. Given the tight  
2   time constraint, we didn't really have time to  
3   consider an alternative, and this has the added  
4   benefit that it's completely comparable with the  
5   ACS data.

6           Q    The ACS question asks for more than just  
7   citizenship, though, correct? 401/403

8           A    It has multiple questions.

9           Q    It asks whether someone was born in the  
10   United States or U.S. territories?

11          A    Correct.

12          Q    Did DOJ ask for data on where a person  
13   was born?

14          A    They did not.

15          Q    To your knowledge, was this information  
16   necessary to satisfy DOJ's needs?

17               MS. BAILEY: Objection. Foundation.

18               THE WITNESS: Which information?

19   BY MR. TILAK:

20          Q    The information on whether someone was  
21   born, for example, in the U.S. territories?

22          A    I don't think that -- that -- I'm not



1 sure what you're asking here.

2 Q Well, the DOJ asked for citizenship  
3 information?

4 A Right.

5 Q Is information on where someone was born  
6 responsive to that request apart from the earlier  
7 question, are you a citizenship or not?

8 A No. So, I mean, that's the way the ACS  
9 question is read, so that's what we went with, so.

10 Q The ACS question also requests whether  
11 individuals were born abroad to U.S. citizens?

12 A Correct. 401/403

13 Q DOJ did not specifically ask for that  
14 information, correct?

15 A No. They did not.

16 Q The ACS question asks if a citizen is  
17 naturalized, correct?

18 A Correct.

19 Q And, again, that was not specifically  
20 requested by DOJ?

21 A No.

22 Q It also asks the year someone was

1 naturalized, if they were a naturalized citizen?

2 A Yes.

3 Q And DOJ doesn't ask for this information  
4 either, correct?

401/403

5 A No, it does not.

6 Q At any point, did the Census Bureau ever  
7 consider a question that simply asked, are you a  
8 citizen; yes or no?

9 A Again, that would have required a much  
10 lengthier period of time. It would have required  
11 testing and what have you. And so given the time  
12 frame and the desire to have comparability to the  
13 ACS, a decision was made to go with the ACS.

14 Q So is it a fair statement that because of  
15 the compressed timeline, the Census Bureau went  
16 with a question that asks for extraneous  
17 information not responsive to the DOJ's request?

18 MS. BAILEY: Objection.

19 THE WITNESS: That information is  
20 currently used by -- by DOJ right now. I would  
21 assume that, you know, they would still find that  
22 useful.



1 BY MR. TILAK:

2 Q Did they specifically request it --

3 A They did not.

4 Q Now, we talked a little bit about some of  
5 the evidence that Dr. Abowd cites in his memos for  
6 why there might be a decline in self-response  
7 rates. 401/403

8 Was there any affirmative evidence you're  
9 aware of suggesting that there would not be a  
10 decrease in response rates as a result of this  
11 citizenship question?

12 A No.

13 Q To go back for a second, when the  
14 decision was made to use the ACS formulation, who  
15 made that decision?

16 A That was a conversation within the  
17 Census Bureau.

18 Q Was the Commerce Department involved in  
19 any way?

20 A No.

21 Q Do you know if DOJ was involved in any  
22 way?

1 Q And how are they different?

2 A Well, they're meant to test procedures  
3 and processes and --

4 Q If the Census Bureau had known about the  
5 citizenship question request in February of 2017,  
6 would it have been able to do more testing of that  
7 question?

8 A We certainly would have had more time to  
9 do testing. Whether it would have been as  
10 definitive as we would have liked, I doubt it. It  
11 still would not have been in the decennial  
12 environment of, you know, this spring, summer of  
13 2020.

14 Q Would it have been -- let me rephrase.

15 If the citizenship question had been  
16 requested in February of 2017, would the  
17 Census Bureau have been able to include it in the  
18 2018 end-to-end test?

19 MS. BAILEY: Objection. Calls for  
20 speculation.

21 THE WITNESS: So if a decision had been  
22 made prior to the development of the materials for

1 the 2018 end-to-end test, we would have included  
2 it because it was part of the census. We ran what  
3 we thought was the census. Again, we weren't  
4 testing the questions in the 2018 end-to-end test.  
5 We were testing the systems and procedures.

6 BY MR. TILAK:

7 Q And what systems and procedures,  
8 specifically?

9 A All of the data collection procedures,  
10 all of the data processing procedures, the review  
11 and publication of the date products.

12 Q Did that include nonresponse follow-up  
13 procedures?

14 A It did.

15 Q And did it include proxy response  
16 procedures?

17 A It did.

18 Q And whole person imputation procedures?

19 A It will.

20 Q And based on Dr. Abowd's analysis, is it  
21 accurate that the inclusion of a citizenship  
22 question will increase the NRFU workload?



1           A    That's -- we believe that to be the case,  
2   yes.

3           Q    And is it also an accurate statement  
4   because people who chose to -- who refuse to  
5   respond -- self-respond because of a citizenship  
6   question will also not respond to NRFU and the  
7   proxy workload will also be increased --

8           MS. BAILEY:  Objection.

9   BY MR. TILAK:

10          Q    -- in the 2020 census?

11          A    So we do believe it will lead to an  
12   increase in the proxy rate.  Less confident about  
13   that rate, though, because it's a smaller rate.

14          Q    What do you mean by that?

15          A    Well, the number of proxy responses at  
16   the end is relatively small compared to the NRFU  
17   workload.

18          Q    And of that proportion that's left over  
19   for proxy are hard-to-count populations a  
20   disproportionate part of the proxy response  
21   population as it --

22          A    Yeah.  That's part of what it means to be

1 hard to count, I believe.

2 Q Turning to 1317 on this memo, the last  
3 sentence -- well, let's start with the sentence  
4 above that. "No one provided evidence that there  
5 are residents who would respond accurately to a  
6 decennial census that did not contain a citizen,  
7 but would not respond if it did, although many  
8 believe that such residents had to exist."

9 Does the Census Bureau have any evidence  
10 responsive to this question here?

11 A So I think the Census Bureau's analysis  
12 suggested that there would be some folks who would  
13 have answered the question through  
14 self-response -- or responded via self-response  
15 that would now have to go to NRFU. Accuracy of  
16 NRFU responses is less than self-response and  
17 proxy response is less than NRFU responses.

18 Q So this is -- it's your testimony that  
19 this is not an accurate statement, that the  
20 Census Bureau did, in fact, provide evidence?

21 A So this is the Secretary's assessment of  
22 the evidence that was provided to him total, so.



1 Q But your testimony is the Census Bureau  
2 did provide evidence; is that correct?

3 A Yes.

4 MR. TILAK: We can go off the record for  
5 five minutes.

6 MS. BAILEY: Oh. Taking a break?

7 MR. TILAK: Yeah.

8 VIDEOGRAPHER: The time is 3:44 p.m.  
9 This completes Media Unit Number 3. We are now  
10 off the record.

11 (Off the record.)

12 VIDEOGRAPHER: The time is 3:56 p.m.  
13 This begins Media Unit Number 4. We're now on the  
14 record.

15 Please proceed, Counsel.

16 EXAMINATION BY MS. SHAH:

17 Q Good afternoon. My name is Niyati Shah,  
18 and I represent the plaintiffs in Lupe v. Ross in  
19 the District of Maryland, Case Number 8:1801570.

20 Dr. Jarmin -- of course.

21 I'd like to actually just go back to the  
22 discussion we had earlier today about the race and



1 ethnicity question.

2 Would you characterize combining the two  
3 census questions on race and ethnic origin for the  
4 2020 census as modifying the 2020 census  
5 questionnaire, as compared to 2020 census, or  
6 adding a new question to the 2020 census?

7 MS. BAILEY: Objection. Compound.

8 THE WITNESS: As modifying.

9 BY MR. SHAH:

10 Q Okay. Is it your understanding that the  
11 Census Bureau fielded a National Content Test or  
12 the NCT in 2015 in large part to evaluate the best  
13 way to collect race and ethnicity data for the  
14 2020 census?

15 A Yes.

16 Q And that included the possibility of a  
17 combined race and ethnicity question, correct?

18 A It did.

19 Q Among other things, did the NCT test for  
20 the wording of a combined race and ethnicity, as  
21 well as revised wording for a separate race and  
22 ethnicity question?

1 A I --

2 MS. BAILEY: Objection. Compound.

3 THE WITNESS: I believe it did both.

4 BY MS. SHAH: 401/403

5 Q And did the NCT test for a design and  
6 placement of the combined race and ethnicity  
7 question?

8 A I'm not sure if it did placement or not.

9 Q And did the NCT test for instructions for  
10 each iteration of the race and ethnicity question?

11 A Yes.

12 Q And as well for the questionnaire, as  
13 well?

14 A I'm not sure for the -- entire  
15 question -- I mean, I know for each of the  
16 versions of the question, it had different  
17 versions of the instructions.

18 Q And would you characterize the NCT as a  
19 randomized controlled test?

20 A It was.

21 Q And would the NCT also be considered  
22 field testing?

1 A Yes.

2 Q And from the NCT, would the Census Bureau  
3 be able to tell how certain demographic subgroups  
4 responded to the race and ethnicity question?

5 A Yes.

401/403

6 Q Would they be able to tell how Hispanics  
7 responded?

8 A Yes.

9 Q How about Asians?

10 A Yes.

11 Q What about Native Americans?

12 A I believe so, yes.

13 Q And would they also be able to show how  
14 populations in certain geographic regions  
15 responded?

16 A I'm not sure about geographic regions, so  
17 I'd have to go back and review the -- it was a  
18 large test, because it needed to be able to  
19 breakdown by these various race and ethnic  
20 categories. But, obviously, some of those get  
21 pretty small if you break it into smaller  
22 geographies. So I'm not sure that it had much to



1 say geographically, but I'd have to go back and  
2 review the parameters of the test to answer that  
3 more fully.

4 Q Okay. Fair enough.

5 And it's correct that the Census Bureau  
6 staff recommended that the 2020 census include a  
7 combined race and ethnicity question with a new  
8 MENA category and check boxes for collection of  
9 racial subgroup data pending a parallel effort at  
10 OMB to revise the official standards?

401/403

11 A Yes.

12 Q After the Census Bureau staff made this  
13 recommendation to the Census director, they  
14 initially planned to include this race and  
15 ethnicity question in the 2018 end-to-end test in  
16 Rhode Island, correct?

17 A That is correct.

18 Q And if that combined race and ethnicity  
19 question stayed in the testing -- the end-to-end  
20 testing, would that represent a redesign of the  
21 questionnaire for 2020 census?

22 A So --

1 Q Would it have -- I asked if it would have  
2 informed the Census Bureau's development of the  
3 data collection instruments for the nonresponse  
4 follow-up?

5 MS. BAILEY: Same objection.

6 THE WITNESS: So I'm not sure how it  
7 would have informed. The other forms, when you  
8 asked if it was going to be on there --

9 BY MS. SHAH:

10 Q Yeah.

11 A -- the answer was yes, so.

12 Q Okay. And would -- would the results of  
13 the end-to-end test, if the race and ethnicity  
14 question was -- remained in there as recommended  
15 by the staff, would it have informed the  
16 development of training modules for enumerators?

17 MS. BAILEY: Objection. Calls for  
18 speculation. 401/403

19 THE WITNESS: So part of the end-to-end  
20 test is to review procedures. So regardless of  
21 what form of various questions are on there, it's  
22 going to inform refinements to training

1 procedures.

2 BY MS. SHAH:

3 Q Okay. Just, generally speaking, how  
4 would the Census Bureau go about estimating costs  
5 for a nonresponse follow-up program?

6 A So a lot of it is based on past practice.  
7 So we know, approximately, what the workload's  
8 going to be. We know what we're going to pay our  
9 enumerators, sort of a -- there's a rough formula  
10 that they use to estimate these things, based  
11 on -- you know, historical practice of NRFU and  
12 other things we've learned from the ACS and what  
13 have you.

14 Q Anything else?

15 A No.

16 Q Would a scientifically-rigorous  
17 calculation of these costs include basing  
18 estimates on iterative field testing and other  
19 research conducted over the years in the census  
20 planning phase?

21 MS. BAILEY: Objection. Compound.

22 Objection. Form.

401/403



1 THE WITNESS: So we try to update the  
2 cost models as best we can with relevant  
3 information. If some of that was gleaned from  
4 mid-decade tests, we would have added that in  
5 there.

401/403

6 BY MS. SHAH:

7 Q Okay. And would the final calculation or  
8 estimate also factor in results from the  
9 end-to-end test?

10 A So, yes. It may. So, I mean, we have  
11 changed procedures that affect the productivity of  
12 the enumerators, which is a large cost driver, so  
13 that will be incorporated into updated models.

14 Q But cal- -- so would calculations be  
15 based solely on the self-response rate from the  
16 previous census or ACS?

17 A No. So it's based on the self-response  
18 rate. It's based on the productivity of the  
19 enumerators in the field, based on wages and what  
20 have you. So, you know, those are the three main  
21 cost drivers. What's the workload? What's  
22 productivity? What's the cost per hour of

1           A     So this was a team put together that  
2     consisted of both Census and Commerce Department  
3     officials at the direction of the Secretary. So  
4     shortly after he came on board, there was some --  
5     some cost overruns on various things, and this was  
6     an attempt to get a broad handle on things.

7           Q     And the -- did this assumption of a  
8     3 percent increase factor in the addition of a  
9     citizenship question? 401/403

10          A     No.

11          Q     Okay. I'd like to mark the next document  
12     as Exhibit 25, I believe.

13                 (Plaintiffs' Exhibit 25, Memorandum, was  
14     marked.)

15     BY MS. SHAH:

16          Q     So are you familiar with this memo?

17          A     I am, yes.

18          Q     What is this memo about?

19          A     This was some work that was being done  
20     looking at, you know, sort of various response  
21     propensity type things for the ACS, I believe.

22          Q     What do you mean by various response

1 Q Where enumerators are --

2 A Temporary.

3 Q And are they trained differently, field  
4 representatives?

5 A Well, field representatives are trained  
6 to do the surveys that they conduct. So they go  
7 out in the field and do far more complex surveys  
8 than the decennial. So they're trained for each  
9 of surveys that they do. So they do the current  
10 population surveys, the SIPP, the ACS, the  
11 American Housing -- you know, there's a long list  
12 of surveys that they do that are either  
13 Census Bureau surveys or surveys we do on a  
14 reimbursable basis for government agencies.

15 Q So is it fair to say field  
16 representatives have more training than  
17 enumerators? 401/403

18 A They would certainly have more experience  
19 and training.

20 Q And then on Page 2, field representatives  
21 have asked for additional training to help them  
22 overcome these fears regarding confidentiality and



1 So there's a lot of stuff in here that doesn't  
2 refer to the technical characteristics that Census  
3 did not opine on.

4 BY MS. SHAH:

5 Q And from the technical perspective, was  
6 there anything that they opined on?

7 MS. BAILEY: Objection. Vague.

8 THE WITNESS: No. I think we took what  
9 we -- what we perceived from this letter as the  
10 technical requirements from DOJ for block-level  
11 data and tried to come up with a solution for that  
12 problem.

13 BY MS. SHAH:

14 Q And did you discuss this letter with any  
15 knowledge of jurisdictions actually going about  
16 drawing districts?

17 A No, not really. I mean, we have people  
18 in our redistricting office that had some input on  
19 this. But they provide the data. They're not  
20 involved in redrawing districts.

21 Q Did you discuss this letter with anyone  
22 who had knowledge or experience with litigating

1 Section 2, voting rights cases?

401/403

2 A No.

3 Q And what was your understanding of why  
4 DOJ needs to have this citizenship question asked  
5 on the short form?

6 A So they needed more geographically  
7 granular data. So right now, the no PL94 data at  
8 the block level, these data for the five-year ACS  
9 are at the block group level, and they have to  
10 model them down to the block level. They just  
11 wanted the data at the same level of geographic  
12 specificity that would be more accurate data.

13 Q Okay. If you look at the bottom of  
14 Page 2, the General Counsel sets out a bulleted --  
15 bulleted reasons why he believes the ACS does not  
16 yield annual data for enforcing the Voting Rights  
17 Act. The first bullet contends jurisdictions  
18 conducting redistricting use -- redistricting use  
19 total population data from Census to determine  
20 compliance with the Constitution's one-person,  
21 one-vote requirement. What is your understanding  
22 of that requirement?

1 on what we're going to do. So --

2 Q And what would be the purposes of talking  
3 points in this context?

4 A So to be able to have a clear message  
5 about, you know, how we were responding with the  
6 citizenship -- the process that we were following  
7 on the citizenship question.

8 Q And if I can turn your attention back to  
9 the draft, which is marked as Exhibit 28, do you  
10 recall if that letter and the content in that  
11 letter seemed to you to be an appropriate basis  
12 for creating talking points to address questions  
13 about the citizenship question?

401/403

14 A Yeah. And it wasn't about the  
15 citizenship question. It was about what we were  
16 doing in response to the question. So --

17 Q And -- and to clarify, what you were  
18 doing in response to DOJ's inquiry about --

19 A Right.

20 Q -- adding a citizenship question?

21 A Right.

22 So this seems to be a consistent -- so I



1 don't remember if this is exactly what we agreed

2 to, but --

401/403

3 Q And the middle of this letter, it goes  
4 through five steps, correct?

5 A Uh-huh.

6 Q And those five steps are summarized in  
7 numerous documents that we've looked at today --

8 A Right.

9 Q -- for your deposition?

10 A Yes.

11 Q Is this a standard process that the  
12 Census Bureau uses for adding questions to the ACS  
13 and then also to the decennial census?

401/403

14 A Correct.

15 Q Okay. I want to mark this as Exhibit 30?  
16 (Plaintiffs' Exhibit 30, Letter, was  
17 marked.)

18 BY MS. BRANNON:

19 Q Are you familiar with this document?

20 A I'm not sure if I've seen this or not,  
21 but I think I've seen other letters like this,  
22 though.

1 Q Would you typically approve a letter like  
2 this?

3 A I mean, especially if it's a form and we  
4 were discussing it in, you know, sort of the  
5 correspondence group, I probably would have seen  
6 it.

7 Q Would your log show whether you approved  
8 this letter or not?

9 A I'm not sure that it would show that I  
10 approved it or not.

11 Q Would it show whether you received a  
12 letter that was dated January -- January 31, 2018?

13 A So it -- it would show if I received a  
14 letter, yes.

15 Q Would it show if you received a draft of  
16 a letter that was to go out on January 31, 2018  
17 from Secretary Ross?

18 A That, I'm not sure.

19 Q This letter is markedly different than  
20 what we have marked as Exhibit 28, correct?

21 A Correct.

401/403

22 Q And none of the five steps are

1 removed -- or all of the five steps were removed,  
2 none of those are in the January 31, 2018 letter?

3 A That's correct. 401/403

4 Q Do you remember any discussions with  
5 anyone at Commerce about the changes of this  
6 letter to the draft of the version that Secretary  
7 Ross sent out?

8 A I don't -- not offhand, no.

9 Q Would you have had any conversations with  
10 Karen Dunn Kelley about this letter?

11 A I don't know.

12 Q I'm going to turn your attention to what  
13 I'm going to mark as Exhibit 31.

14 (Plaintiffs' Exhibit 31, Email, was  
15 marked.)

16 BY MS. BRANNON:

17 Q Are you familiar with this document?

18 A This sounds like KDK responding to my  
19 original email that we discussed earlier.

20 Q And she says, "Gentlemen, can you please  
21 sort through the issues below?"

401/403/802

22 Do you know what she meant by that?



1           A    I think we were trying to track down the  
2 changes, yeah.

3           Q    And when you say track down the changes,  
4 these were changes that were made by somebody at  
5 the Commerce Department? 401/403

6           A    I think so, yeah.

7           Q    And that would have been at some point  
8 before January 24, 2018?

9           A    The changes?

10          Q    Yes.

11          A    Yeah. I assume so, yeah.

12          Q    And do you have any recollection as to  
13 whether you received those changes?

14          A    So I don't recall, per se.

15          Q    Do you remember having any conversations  
16 with anyone about -- at Commerce about the content  
17 of the letters that Secretary Ross was sending to  
18 members of Congress in response to inquiries about  
19 the citizenship question?

20          A    No. I mean, again, this was -- you know,  
21 there was lots going on. This was not a -- you  
22 know, a key focus point. We were trying to

1 A I think this looks familiar.

2 Q I'm going to direct your attention to the  
3 email from Burton Reist on January 24, 2018, which  
4 I acknowledge you were not cc'd on, but I just  
5 have a question for you, if you know. In the  
6 middle of the email that's at the bottom of  
7 Page 8558, it says, "We pulled the residence  
8 criteria topics from the PMR."

9 What is the PMR?

10 A Program management review. We do one  
11 quarterly for the decennial census.

12 Q Was there a program management review  
13 done in January of 2018?

14 A I have to go back and look, but there  
15 probably would have been one in there -- at some  
16 point. 401/403

17 Q Okay. And then if you'll turn the page  
18 over to 8559 it says, "We also haven't heard  
19 anything about the response to the  
20 senator" -- "about the response to Senator Harris  
21 on the citizenship question. That response is to  
22 inform the talking points we use on this issue for

1 the PMR."

2 A Correct.

3 Q And that's the performance management  
4 review?

401/403

5 A Program management review.

6 Q Program management review.

7 A Right. And we're only two days out from  
8 the PMR, so there you go.

9 Q Right. Okay. So we're only two days  
10 out, so there was one coming?

11 A So there's some urgency that we were  
12 going to be expected to say something about this.

13 Q Right. Are you involved in the drafting  
14 materials for the PMR?

15 A No, we're not directly.

16 Q Not directly.

17 A No.

18 Q Do you have any awareness of whether the  
19 materials drafted for the PMR that was done two  
20 days after this email was sent relied on that  
21 draft email -- that draft letter from  
22 Senator Harris?



1 Q In the middle, the second thing down says  
2 testing, correct?

3 A Uh-huh.

4 Q Let me go back. This looks similar to  
5 the five points that were outlined in that draft  
6 letter to Senator Harris, correct?

401/403

7 A Correct.

8 Q So it doesn't appear that there were any  
9 changes that were made between the time that email  
10 took place on the 24th and when this presentation  
11 was done?

12 A That's correct.

13 Q So then I'm going to direct your  
14 attention to the testing, which is the second  
15 point down on Page 23.

16 A Right.

17 Q And it says, "Question performance is  
18 evaluated in a field test."

19 A Uh-huh.

20 Q What do you mean -- what is meant by  
21 question performance?

22 A So, again, there's sort of the cognitive

1           A    I don't understand the -- so we've jumped  
2   to NRFU here?

3           Q    Yes.

4           A    So are you talking about NRFU generally  
5   or are you --

6           Q    Yes. When you're doing field testing,  
7   are you looking for things like the efficacy of  
8   nonresponse follow-up?

9           A    So I don't know what you mean by  
10   efficacy, per se. But certainly in the, like,  
11   2018 end-to-end field test --

12          Q    Yes.

13          A    -- we tested our systems and procedures  
14   for NRFU during that test.

15          Q    And when you say you tested your system  
16   and procedures, that was to do an evaluation of  
17   how effective the nonresponse follow-up was during  
18   the 2018 end-to-end test?

401/403

19          A    Yes.

20          Q    So that is something you would learn from  
21   a field test?

22          A    Yes. And primarily to see that the

1 systems and procedures worked as planned.

2 Q And is that an evaluation as part of the  
3 evaluation that is currently going on right now  
4 for -- of the results of the end-to-end field  
5 test? 401/403

6 A Yes.

7 Q All right. I'm going to switch gears,  
8 and I just have a few more questions, and then I  
9 think we have one more person who is going to  
10 -- and then we'll be done with you for tonight.

11 I think you testified earlier citizenship  
12 is on the CPS, this --

13 A Current Population Survey.

14 Q -- Current Population Survey; is that  
15 correct?

16 A That's my understanding, yes.

17 Q And then I think you said the  
18 Census Bureau is tracking item nonresponse rates  
19 on the CPS to the citizenship question; is that  
20 correct?

21 A We tracked item nonresponse rates for all  
22 of the questions.



1 A I'm not sure.

2 MS. BRENNAN: That's all I have. Can we  
3 go off the record just for a minute?

4 VIDEOGRAPHER: Time is 5:07 p.m. We're  
5 going off the record.

6 (Off the record.)

7 VIDEOGRAPHER: The time is 5:17 p.m.  
8 We're back on the record.

9 Please proceed, Counsel.

10 EXAMINATION BY MR. CASE:

11 Q Dr. Jarmin, my name is Andrew Case. I'm  
12 from Manatt Phelps & Philips. We represent the  
13 City of San Jose and Black Alliance for  
14 Just Immigration in the Northern District of  
15 California, Case Number 18-CV-2279.

16 Did the Census Department submit a list  
17 of topics to be included in the 2020 decennial  
18 census to Congress in March of 2017? 401/403

19 A Yes.

20 Q Was citizenship one of those topics?

21 A Not for the census.

22 Q Not for the short-form decennial census?

1 A Correct.

2 Q Did you discuss with anyone at Commerce  
3 that submission prior to receiving the letter from  
4 the DOJ in December?

5 A So I did not. So I wasn't involved in  
6 the submission of that document prior to that, and  
7 that probably would have been when those  
8 conversations would have taken place, so. 401/403

9 Q After you took over, as we'll call it,  
10 acting director --

11 A Much easier.

12 Q -- did you have conversations about the  
13 submission of topics that had previously been  
14 made?

15 A Not that I recall, no.

16 (Plaintiffs' Exhibit 34, Email, was  
17 marked.)

18 BY MR. CASE:

19 Q Give you a document that's been marked as  
20 Exhibit 24. This is Bates number 3470. I know  
21 you're not on the forwarded email, but you're on  
22 the email below dated October 11, 2017. I'd like

1 you first to identify the people on this email.

2 A On which one?

3 Q The one below, the October 11th one.

4 A So Joanne Crane is our CFO.

5 Lisa Blumnerman was, I think, still at that time  
6 the head of decennial, and Enrique as acting  
7 deputy director.

8 Q And in the subject line, there's two  
9 questions from Molly McCarthy on citizenship as a  
10 topic. Who is Molly McCarthy?

11 A She's a Hill staffer, I believe.

12 Q For whom?

13 A I don't know.

14 Q Do you know which party?

15 A No.

16 Q Okay. And the first question, in short,  
17 is whether the topics are closed or whether a new  
18 question can be added that's not one of the  
19 topics. Is that a fair summary of that? 401/403

20 A Yes.

21 Q And what was your answer to that question  
22 in October of 2017?



1           A    You know, I don't recall what we told  
2   Molly at the time.

401/403/802

3           Q    What did you believe the answer to that  
4   question was in October of 2017?

5           A    I think -- in October of 2017, I think we  
6   thought it was closed.

7           Q    Okay. And you see that Enrique Lamas  
8   sends this to Karen Dunn Kelley?

9           A    Correct.

10          Q    Did he speak to you about sending this to  
11   Karen Dunn Kelley?

12          A    I mean, I think it was something that we  
13   often -- you know, we like to keep Karen in the  
14   loop on things, and so we got an inquiry from the  
15   Hill, so we let her know. I don't recall talking  
16   to Enrique directly about it, but, obviously, I  
17   would have agreed, obviously, to forward it to  
18   her.

19          Q    Did it surprise you that someone from the  
20   Hill was asking about adding a citizenship  
21   question to the census in October of 2017?

22          A    I don't think -- you know, again, this

1           A     Yes.  That's -- that's the one we  
2     discussed this morning.

3           Q     So at least two?

4           A     Yeah.

5           Q     Okay.  During that second  
6     meeting -- you're talking about the February 19th  
7     letter, but I think it was a January 19th letter.  
8     Is that -- is there a February 19th letter, as  
9     well?

10          A     I think -- wasn't it February 19th?

11          Q     Well, there's a lot of letters,  
12     but -- during the meeting where Secretary Ross  
13     expressed concern about imputation --

14          A     Right.

15          Q     -- whatever day it took place on, did  
16     Secretary Ross state that he had scientific data  
17     to suggest that asking the citizenship question  
18     would provide better information than imputation?

19          A     So the total number of cases that you  
20     would have to impute asking the question is lower  
21     than if you used administrative data.

22          Q     What did Secretary Ross say regarding his

1 concerns about imputation?

2 A I think his concern is the same concern  
3 that we all have, that imputed data is lower  
4 quality than nonimputed data. 401/403/802

5 Q Did he say there was any scientific basis  
6 he was relying on that had -- that said asking the  
7 question would produce better results?

8 A He did not cite any, no.

9 Q And did anyone from Census cite data that  
10 imputation would provide better results?

11 A So I think that the comparison on our end  
12 was that -- that there would be an increase in the  
13 NRFU workload, and that, you know, for some  
14 cases, you know, the administrative data appeared  
15 to be more accurate than self-response data.

16 Q Does the Census impute data for any items  
17 that are on the ACS and are not on the  
18 short-form census?

19 A We impute data for almost every item,  
20 yeah.

21 Q And did Secretary Ross express any  
22 concern about the quality of that data?



1 A He did not.

2 Q Grandparents as caregivers?

3 A We don't -- weren't discussing that,  
4 though. 401/403

5 Q Has he ever -- has anyone from Commerce  
6 ever expressed concern about imputed data for  
7 items on the ACS that weren't on the short form?

8 MS. BAILEY: Objection. Foundation.

9 THE WITNESS: No.

10 BY MR. CASE:

11 Q In either of the meetings that you had  
12 where Secretary Ross was present, did he say that  
13 he had been interested in the question before the  
14 DOJ letter?

15 A He did not.

16 Q Did he say that the Census Department had  
17 reached out to DOJ to create that letter?

18 MS. BAILEY: Objection. Assumes facts  
19 not in evidence.

20 THE WITNESS: That the Census Department  
21 had reached out --

22 BY MR. CASE:

1 A Right.

2 Q -- or when --

3 A Right.

4 Q -- the document is talking about

5 Alternative B will result in erroneous

6 enumerations.

401/403

7 Do you agree with that statement?

8 A Yes.

9 Q That Alternative B will result in

10 erroneous enumerations?

11 A Yes.

12 Q I'd like you to look to your Exhibit 16,

13 which is that March 1 letter I gave you before.

14 A Which one? This one?

15 Q Yeah, 9182. Look on Page 9816, if you

16 would, near the front, the cover letter.

17 Do you see the statement of how

18 Alternative D will include all the negative -- I

19 don't have it in front of me -- but all the

20 negative impacts --

21 A Right.

22 Q -- of Alternative B?

1 A Right.

2 Q Do you agree with that statement?

3 A Yes.

4 Q Do you agree, therefore, that

5 Alternative D will include the erroneous

6 enumerations for Alternative B?

7 A Yes.

8 Q Alternative D will result in erroneous

9 enumerations?

10 A Yes.

11 Q Just -- yeah. One quick thing on the  
12 actual decisional memo, which is Abowd Exhibit 12.

13 Page 5, which is 1317, on the top of the page,

14 fourth line down, "For the approximately

15 90 percent of the population who are citizens,

16 this question is no additional imposition."

17 What do you understand that sentence to

18 mean?

401/403

19 A So that's -- that those -- those people

20 will not have any objections to filling out the

21 questionnaire.

22 Q But it will be an imposition, won't it?



1 A All questions are an imposition, yes.

2 Q So -- okay. So, yes, it would be an  
3 imposition.

4 And one quick thing, on the front here,  
5 first page, bottom paragraph, "I also met with  
6 Census Bureau leadership on multiple occasions."

7 A Uh-huh.

8 Q How many times did you meet with  
9 Secretary Ross to discuss the DOJ request?

10 A I don't know the number. I'd have to go  
11 back and look at my calendar.

12 Q More than once?

13 A We've already established at least twice.

14 Q At least twice.

15 More than twice?

16 A So, you know, I mean, there was -- there  
17 was discussions where we didn't have much of a  
18 discussion, just that we were looking at it and  
19 then there was more meeting discussions that  
20 happened later.

21 Q What were the discussions where you were  
22 just looking at it like --

1           A     That we were beginning our process and  
2     doing a technical review.

3           Q     Were these face-to-face meetings or phone  
4     calls?

5           A     Face-to-face.

6           Q     Okay. You testified this morning with  
7     regard to finding people to speak to the  
8     Secretary, that you reached out to AEI because  
9     they are, quote, I believe this is correct, on the  
10    conservative side of D.C. politics; is that  
11    correct?

401/403

12          A     Correct.

13          Q     What about the citizenship question led  
14    you to believe that a group on the conservative  
15    side of the D.C. politics would be in favor of it?

16          A     Because that's where the support for the  
17    question has been generated in the past.

18          Q     And what groups in the past have  
19    supported this question?

401/403/802

20               MS. BAILEY: Objection. Calls for  
21    speculation.

22    BY MR. CASE:

1 Q The support that you just referenced?

2 A Republicans in Congress.

3 Q Which Republican specifically that you  
4 recall. 401/403/802

5 A I believe it was Vitter.

6 Q And what is Vitter's reason for adding a  
7 citizenship question, if you know?

8 MS. BAILEY: Objection. Calls for  
9 speculation.

10 THE WITNESS: I don't recall his exact  
11 reason.

12 BY MR. CASE:

13 Q But your association with the citizenship  
14 question is with the David Vitter amendment of  
15 2009?

16 A That's -- that -- my association?

17 Q You understand --

18 A I recall that that happened, yes.

19 Q Do you recall any groups that are  
20 associated with voting rights having support for  
21 the citizenship question on the census?

22 A No.



1 MR. CASE: Can I ask just one question  
2 based on that?

3 FURTHER EXAMINATION BY MR. CASE:

4 Q You testified that the process is for the  
5 short form. Is there any reason that there should  
6 be --

7 MS. BAILEY: Mischaracterizes testimony.

8 MR. CASE: I'm sorry.

9 BY MR. CASE:

10 Q Tell me what you understood the answer to  
11 be there about the five-step process.

12 A So we've not entertained additions to the  
13 long form of the census. The process was for the  
14 census generally -- I mean, the short form. So  
15 prior to the ACS, people requested new questions,  
16 they were put on the long form, not on the short  
17 form. The short form has gotten shorter over the  
18 years, not longer.

19 Q Is there any reason to engage a less  
20 robust process for the short-form census than for  
21 the long-form census?

401/403

22 A No.

\* \* \* \* \*

CERTIFICATE OF REPORTER

I, KAREN LYNN JORGENSEN, RPR, CSR, CCR the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that the said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action



KAREN LYNN JORGENSEN, RPR, CSR, CCR

Dated this 23rd day  
of August , 2018.